IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 266 of 2005

ABDUL RASHID
V/S
SHRI BRAHAMAN SAVARNKAR SABHA & ANR

Mr. J GEHLOT, for the appellant / petitioner

Mr. SR SONI, for the respondent

Date of Order : 1.11.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant.

Learned counsel has filed an application under Order 41 Rule 27 intending to produce the agreement dated 25.2.66. It is alleged that the document was not traced out previously, and was in possession of Abdul Gani, who is the real uncle of the appellant, and on account of being not traceable, it was not produced in the Court below. It would suffice to observe firstly that the defendant, while in the witness-box, has clearly deposed to be not having any such document, then no affidavit of Abdul Gani has been filed, to depose that the document was given by him to the appellant. Likewise, the document purports to be a document, whereby the property is said to have been sold, inasmuch as, though the document purports to be an agreement to sell, but then it is contended by learned counsel that by this document, the property was sold.

Admittedly, the document is not registered. Over and above all this, even if this document were to be considered, it doesn't stipulate that the rent once determined shall never be increased, all that was stipulated that so long the tenant continues to pay rent, he will not be evicted. Thus, taken from any stand point, I do not find any sufficient ground to accept the application filed under Order 41 Rule 27. The same is, therefore, dismissed.

I have heard learned counsel on merits, and have also gone through the impugned judgments.

In my view, the findings recorded by the learned lower Appellate Court do not require any interference in second appeal. It is significant to note that the defendant has simply come with a stand of the standard rent claimed by the plaintiff to be excessive, but has not said what should be the standard rent according to him. It was for the first time contended in the Appellate Court that the standard rent could not exceed Rs.500/-, but then no basis has been given for that on record by the appellant. It was contended by learned counsel that the appellant had produced on record a receipt Ex.A/1 about the rent of the other shop in the locality, which document had not been considered. Suffice it to say that this receipt is said to be receipt of rent, which had been mutually increased by the parties with respect to another shop in the locality, but then the defendant in his statement has clearly deposed to be not aware about the prevalent rate of rent of the

other shop in the locality, and has deposed ignorance about the prevalent rate of rent to be Rs.1000/- per month either, as such Ex.A/1 has no bearing for the purpose of enabling the Court to arrive at a conclusion about the amount of standard rent to be fixed.

In my view, the learned Courts below have rightly appreciated the evidence of the parties, and have come to the standard rent.

The appeal thus, does not involve any substantial question of law. The same is, therefore, dismissed summarily.

(N P GUPTA),J.

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